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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,512	07/02/2003	Carl J. Conforti	05/01 CC	3523

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,512

Applicant(s)

CONFORTI, CARL J.

Examiner

Gail Verbitsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-27 and 30-38 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 19-21, 27, 29-31 and 36-38 is/are rejected.
7) ☒ Claim(s) 22-26 and 32-35 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 31 is finally objected to because of the following informalities: "the film" in line 8 lacks antecedent basis. Appropriate correction is required.

Specification

2. The disclosure is objected to because of the following informalities:
perhaps applicant should replace "led" throughout the specification with -LED--.
Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 31 is finally rejected under 35 U.S.C. 102(e) as being anticipated by Babkes (U.S. 6634789).

Babkes discloses in Fig. 3 a temperature-measuring device comprising a housing 100 including a main portion 180 configured to be grasped by an operator. A temperature probe 161 retained by the housing and configured to sense temperature, the probe extending from the main portion 180 of the housing and configured to be inserted into a patient's cavity. The device also comprises

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at least one strip of thin flexible material 184 coupled to the housing 180 and configured to cover a tip portion of a probe, which is in contact with the patient's cavity during temperature measurements. The strip (cover) 184 is positioned in an isolation chamber (dispensing mechanism) 140 which is coupled to the housing, the mechanism dispense the strips (covers) when the tip of the probe 161 when the tip is inserted in the strip.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 19-20, 27 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Mahler et al. (U.S. 6450970) [hereinafter Mahler].

Mahler discloses in Figs. 6 a temperature-measuring device comprising a housing including a main portion configured to be grasped by a person, a temperature probe attached to the housing and configured to sense temperature, the probe is extending from the main portion of the housing to be inserted into a patient's tympanic cavity/ orifice. The device also comprises a light source 160 coupled to the housing and configured, along with a mirror 164 to illuminate a region/ provide light in the vicinity of the probe/ in front of the probe (eardrum) and thus, inherently, to assist to the user to proper position the device within the cavity and to assess the inflammatory process. The illuminating source 160 is

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located external and behind the tip of the probe, thus, also providing the light to the behind the probe. The illuminating source 160 can be independently and selectively operated/ activated by a switch. The device also comprises a temperature sensitive means and a display for visual temperature indication.

Although, Mahler does not explicitly teach that the illuminating source 160 is a visible light source, the fact that the light source illuminates the area of interest, as done, for example by a flashlight, stands for the fact that the illuminating source 160 can be a visible light source, as opposed to an invisible light source, i.e., infrared light, not seen to an operator without a special equipment.

7. Claim 29 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over of Mahler as applied to claims 19-20, 27 above, and further in view of Pitts (U.S. 6435689).

Mahler discloses the device as stated above in paragraph 6.

Mahler does not teach illuminating ink on the housing of the device, as stated in claim 29.

Pitts teaches to put a luminescent coating (illuminating ink) onto a surface of a device to make the device illuminate in dark.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the illuminating means in the device, disclosed by Mahler, with an illuminating coating to the housing, as taught by Pitts, because both of them are alternate types of illuminating means which will

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perform the same function, of illuminating an interior space they are inserted in and thus, a surface of interest, if one is replaced with the other.

8. Claims 21 and 30 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Mahler, as applied to claims 19-20, 27 above, and further in view of Lebens et al. (U.S. 20030095406) [hereinafter Lebens].

Mahler discloses the device as stated above in paragraph 6.

Mahler does not explicitly teach a replaceable bulb, and that the bulb is a LED.

Lebens discloses a device wherein an illumination source is an LED, which can be replaced.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Mahler, so as to make the bulb replaceable, as taught by Lebens, so as to allow the user to replace it when it does not produce illumination, in order to provide the device with the illumination source needed for a proper use of the device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the bulb in the device disclosed by Mahler, with an LED, as taught by Lebens, because both of them are alternate types of illuminating sources which will perform the same functions, of delivering light to a surface of interest, if one is replaced with the other.

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9. Claims 31, 36-37 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Mahler in view of Babkes.

Mahler discloses the device as stated above in paragraph 6.

Mahler does not teach a dispensing mechanism, as stated in claim 31 in combination with the remaining limitations of claims 36-37.

Babkes discloses in Fig. 3 a temperature-measuring device comprising a housing 100 including a main portion 180 configured to be grasped by an operator. A temperature probe 161 retained by the housing and configured to sense temperature, the probe extending from the main portion 180 of the housing and configured to be inserted into a patient's cavity. The device also comprises at least one strip of thin flexible material 184 coupled to the housing 180 and configured to cover a tip portion of a probe, which is in contact with the patient's cavity during temperature measurements. The strip (cover) 184 is positioned in an isolation chamber (dispensing mechanism) 140 which is coupled to the housing, the mechanism dispense the strips (covers) when the tip of the probe 161 when the tip is inserted in the strip.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add dispensing mechanism to the housing of the device, disclosed by Mahler, the mechanism being capable of dispensing thin strips/ covers, as taught by Babkes, so as to enable the operator to replace covers while going from one patient to another, in order to avoid contamination and spreading infections.

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10. Claim 38 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Mahler and Babkes as applied to claims 31, 36-37 above, and further in view of Lebens.

Mahler and Babkes disclose the device as stated above in paragraph 9.

They do not explicitly teach the bulb is a LED.

Lebens discloses a device wherein an illumination source is an LED.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the bulb in the device disclosed by Mahler and Babkes, with an LED, as taught by Lebens, because both of them are alternate types of illuminating sources which will perform the same functions, of delivering light to a surface of interest, if one is replaced with the other.

Allowable Subject Matter

11. Claims 22-26, 32-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to claims 19-27, 29-38 have been considered but are moot in view of the new ground(s) of rejection necessitated by the present amendment.

Conclusion

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13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

Gail Verbitsky
Primary Patent Examiner, TC 2800



August 23, 2004